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Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Promoting Efficient Use of Spectrum Through
Elimination of Barriers to the Development of
Secondary Markets

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WT Docket No. 00-230

REPLY COMMENTS OF WINSTAR COMMUNICATIONS, INC.

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REPLY COMMENTS OF WINSTAR COMMUNICATIONS, INC.

Winstar Communications, Inc. ("Winstar"), by its attorneys, hereby submits these Reply Comments in the above-captioned proceeding.¹

I. INTRODUCTION.

The commenters resoundingly agree that the FCC should implement secondary markets policies to permit licensees to enter into agreements with third parties for the use of their spectrum, without requiring prior Commission approval of such arrangements. The commenters list many benefits secondary markets policies promote, including that (1) licensees will have greater flexibility in developing and using their spectrum;² (2) market forces will be able to determine the development and use of licensees' spectrum;³ (3) spectrum that would otherwise

¹ In re Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Notice of Proposed Rulemaking, WT Dkt. No. 00-230, FCC 00-402 (rel. Nov. 27, 2000) ("Notice").

² See, e.g., Comments of 37 Concerned Economists, at 2 ("More flexible use of spectrum will unleash large efficiencies in spectrum management."); Comments of Enron Corp., at 4 ("[A]llowing licensees to market spectrum will create incentives for them to use their licensed spectrum more efficiently.").

³ See, e.g., Comments of 37 Concerned Economists, at 2; Comments of Teligent, Inc., at 2 ("[T]hese changes are necessary to spur the development of secondary markets in spectrum, which, in turn, will complement the primary spectrum market (auctions) and facilitate the availability of spectrum on both a short term (spot market) and long term basis.").

be underutilized will be put to use;⁴ and (4) there will be a reduction in the transaction costs of licensees who lease spectrum to or from third parties.⁵ Based on this record, it is evident that the FCC should adopt secondary markets policies expeditiously.⁶ To assist the FCC with implementing secondary markets policies, Winstar has attached proposed modifications to Parts 1 and 101 of the FCC's rules.

As explained in Winstar's comments, in determining what rules and regulations the FCC should adopt for its secondary markets policies, it must consider carefully whether its proposals will hinder secondary market forces.⁷ Winstar was most concerned with the FCC's proposal to hold licensees ultimately responsible for all actions of lessees. Winstar explained that such a policy would discourage licensees from entering into secondary arrangements and, as a result, would operate to the detriment of secondary markets. Several commenters concurred in that assessment, stating that if licensees are held responsible for lessees' actions, licensees will not have the incentive to enter into secondary arrangements.⁸ Based on these comments, the FCC should hold lessees directly responsible for complying with the Communications Act and the

⁴ See, e.g., Comments of the Rural Telecommunications Group, at 9 ("[L]easing will serve a public interest in putting unused spectrum to work for the benefit of the public."); Comments of Securicor Wireless Holdings, Inc., at 4 ("[S]pectrum leasing makes sense to licensees because it places spectrum that might otherwise go unused or underutilized into use, producing more revenue for licensees, while allowing licensees to maintain their core asset -- their licensed spectrum.").

⁵ See, e.g., Comments of Teligent, Inc., at 2-3 ("[T]he increased use of spectrum leasing will promote the more efficient use of the spectrum and immediately enhance the supply of spectrum available in the market without regulatory delays associated with licensing and transfer of control proceedings.").

⁶ See, e.g., Comments of 37 Concerned Economists, at 5 ("[T]he Commission should quickly restructure its rules to *allow* a secondary market. Delays will impose huge costs on consumers as the market starves for access to radio spectrum today.") (emphasis in original).

⁷ See Comments of Winstar, at 2-3.

⁸ See Comments of the Rural Telecommunications Group, at 9 & 13; Comments of the National Telephone Cooperative Association, at 5; Comments of UTStarcom Inc., at 3; Comments of El Paso Global Networks Company, at 5; Comments of Enron Corp., at 19.

FCC's rules and policies.⁹ Similarly, the FCC should not adopt its proposed "control" test which would require licensees to retain full responsibility for their lessees' actions and certify that their lessees comply with the Act and the FCC's rules. Rather, the Commission should find that licensees that have entered into secondary arrangements are in compliance with Section 310(d) of the Communications Act if they (i) retain *de jure* control of the license; (ii) notify the FCC concerning the lessee's/sublessee's identity and contact information; and (iii) meet a reasonable standard of care for the license (*i.e.*, do not enter into a lease knowing the lessee will use the spectrum for unlawful purposes).

II. IT IS CONSISTENT WITH THE PUBLIC INTEREST TO HOLD LESSEES DIRECTLY RESPONSIBLE FOR THEIR ACTIONS.

The FCC has promoted market-based spectrum policies in various ways over the years. The adoption of a leasing policy is the next sensible step to further promoting the use of spectrum based on market demands. As such, Winstar fully supports the Commission's adoption of secondary markets policies. However, the Commission must not impose self-defeating regulations on secondary markets. The proposal in the Notice to hold licensees "ultimately responsible" for the actions of lessees, including whether they comply with the Act and the FCC's rules, is unnecessary, burdensome for licensees and will impede market forces.¹⁰ As stated by Winstar in its comments, such a regulatory scheme inevitably will diminish licensees'

⁹ As demonstrated in Winstar's comments, the Act provides direct jurisdiction over lessees using transmitting radio stations.

¹⁰ Notice ¶ 29.

incentives to lease spectrum to third parties.¹¹ That, in turn, will prevent at least some welfare-enhancing leases from being concluded.

Other commenters concur with Winstar's assessment. The Rural Telecommunications Group ("RTG") states that imposing compliance obligations on licensees "will snuff out all incentives that a licensee may have to lease its unused spectrum rights."¹² Accordingly, RTG urges the Commission to determine that licensees are not responsible for the acts of lessees using their spectrum. Rather, RTG states, "[t]he Commission can and should impose its regulations directly upon these spectrum users."¹³ The National Telephone Cooperative Association agrees, stating that the imposition of liability on licensees for the actions of lessees "would create a new barrier to leasing that would neither facilitate leasing nor increase the opportunities for . . . the provision of spectrum-based services."¹⁴ Both RTG and NTCA represent rural telecommunications carriers that desire to enter into secondary arrangements with licensees. It is significant, then, that as potential lessees RTG's and NTCA's members are willing to be held directly accountable for complying with the Act and the FCC's rules.

Moreover, El Paso Global Networks Company argues that the user of the spectrum is in the best position to comply with the Act and the FCC's rule and that the FCC "would be undermining the operation of the market it seeks to create if it enforces its rules in such a way as

¹¹ Comments of Winstar, at 7.

¹² Comments of the Rural Telecommunications Group, at 13.

¹³ Id. at 9. Moreover, RTG notes that in commercial settings lessors are not typically held responsible for "the bad acts of their lessees unless they participate in those acts or have actual knowledge of them. Lessors are not the guarantors of their lessees' behavior and it should be no different in the context of spectrum usage rights." Id. at 13.

¹⁴ Comments of the National Telephone Cooperative Association, at 5; see also Comments of UTStarcom, Inc., at 3 (arguing that licensees may not lease spectrum where they would have the burden of ensuring that lessees are complying with the FCC's rules).

to afford users the rights but not the responsibilities inherent in the use of leased spectrum or spectrum rights.”¹⁵ Similarly, Enron Corporation asserts that secondary markets will attract buyers and sellers only if “the licensee and the party actually transmitting on the spectrum are held responsible for complying with the Commission’s rules and regulations.”¹⁶ It explains that, “[b]oth the licensee and any transmitting users will require some assurances from the Commission that the failure of the other to comply with FCC regulations will not threaten their continued use of the spectrum.”¹⁷ Otherwise, Enron states that firms will not participate in secondary markets where they face such unmanageable risks.¹⁸

The 37 Concerned Economists urge the FCC to eliminate barriers to the productive use of radio spectrum.¹⁹ They argue that “restrictions should be minimized to facilitate market transactions.”²⁰ Imposing a rule that requires licensees to be “ultimately responsible” for lessees’ use of their spectrum is a restriction that will impede secondary markets -- exactly what the FCC is attempting to promote.

¹⁵ Comments of El Paso Global Networks Company, at 5.

¹⁶ Comments of Enron Corp., at 19.

¹⁷ Id.

¹⁸ Id. It should be noted that some of the commenters who support the licensee maintaining “ultimate responsibility;” nevertheless claim that the FCC should pursue means of holding lessees directly responsible for their actions. See Comments of Teligent, Inc., at 7; Comments of Securicor Wireless Holdings, Inc., at 10; and Comments of the Office of Advocacy of the United States Small Business Administration, at 1-2.

¹⁹ Comments of 37 Concerned Economists, at 2.

²⁰ Id. at 4.

Section 2 of the Act establishes the FCC's jurisdiction over lessees that are using transmitting radio equipment.²¹ Indeed, the Commission implies in its Notice and elsewhere that the FCC has direct jurisdiction over unlicensed lessees.²² Thus, as described in Winstar's comments and as supported by the record, the FCC should hold lessees directly responsible for their use of the spectrum.²³

III. THE FCC'S PROPOSED *DE FACTO* TRANSFER OF CONTROL TEST MUST BE MODIFIED.

The FCC's proposed *de facto* control test for leases contains provisions that will place undue restraints on licensees' ability to enter leases, and as a result, will restrain secondary markets. The FCC proposes that a wireless licensee entering into a spectrum lease arrangement will retain *de facto* control of its license if it retains full responsibility for compliance with the Act and the FCC's rules, certifies that each spectrum lessee (or sublessee) meets the FCC's eligibility requirements and complies with all applicable technical and service rules, and retains full authority to take all actions necessary in the event of a lessee's noncompliance, including the

²¹ Section 2 of the Communications Act states that the Act applies to all "interstate and foreign communication by wire or radio" and "all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations" 47 U.S.C. § 152. As such, the FCC's jurisdiction over lessees engaging in the transmission of radio signals is clear.

²² See, e.g., Notice ¶¶ 40 & 48; see also In re Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to part 27 of the Commission's rules, Second Report and Order, 15 FCC Rcd 5299, ¶ 17 (2000).

²³ As noted in Winstar's comments, the FCC may want to require licensees that enter into lease agreements (and subleases) to notify the Commission of: (1) the licenses/spectrum to which a lease or sublease applies, and (2) the contact information for the lessee/sublessee. Similar to the FCC's post-notification requirements for *pro forma* transfers of control, this information can be provided promptly after the lease is entered into with the third party. See In re Federal Communications Bar Association's Petition for Forbearance from Section 310(d), Memorandum Opinion and Order, 13 FCC Rcd 6293, ¶¶ 32-33 (1998). Such information will allow the FCC to communicate directly with the lessee/sublessee concerning the operation of its radio equipment and any other issues the FCC may have with the lessee, including enforcement matters.

right to suspend or terminate a lessee's operations.²⁴ As discussed above, requiring licensees to retain full responsibility for their lessees' actions imposes extraordinary responsibilities and concomitant risks upon licensees. Likewise, requiring licensees to make certifications regarding the lessee's eligibility and compliance with the FCC's rules will require licensees to independently determine whether lessees comply with the FCC's rules, a strange proposition at a time when the agency is attempting to rely more on *ex post* enforcement and less on *ex ante* requirements to protect the consuming public. RTG agrees, stating that the Commission "has not proposed any effective change in its existing *de facto* control standard."²⁵

To maintain *de facto* control for Section 310(d) purposes, it should be sufficient for licensees to retain *de jure* control of their licenses and to notify the FCC that a lessee/sublessee is using the spectrum.²⁶ In addition, the Commission should hold licensees to a reasonable standard of care with respect to their licenses.²⁷ Alternatively, the FCC has the authority and, in these circumstances, the responsibility to determine that leases of spectrum are consistent with the public interest and forbear from applying Section 310(d).²⁸

²⁴ Id. ¶ 79.

²⁵ Comments of the Rural Telecommunications Group, at 22; see also Comments of Sprint Corporation, at 4 ("Simply put, the Commission should not substitute the current set of unnecessary control regulations with a new set of unnecessary regulations.").

²⁶ For purposes of spectrum coordination and similar requirements, it is crucial that all users of the spectrum have current knowledge regarding those entities using spectrum adjacent to them. Thus, Winstar proposes that the FCC publish on a weekly basis the notices it receives regarding secondary arrangements. In addition, Winstar urges the FCC to correlate such notices with the appropriate licenses on its Universal Licensing System.

²⁷ Comments of Winstar, at 11.

²⁸ Id. at 11-12; see also Comments of El Paso Global Networks Company, at 12.

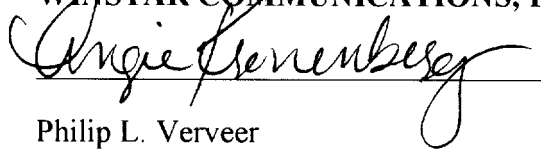
IV. CONCLUSION.

Winstar respectfully requests that the Commission expeditiously implement secondary markets policies for Wireless Radio Services consistent with its comments and reply comments filed in this proceeding.

Respectfully submitted,

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March 12, 2001

**Proposed Rule Modifications
Secondary Markets NPRM
WT Docket No. 00-230**

I. Part 1 Rule Modifications

Modify the “authorization required” rule to recognize that spectrum may be used by third parties pursuant to secondary arrangements.

§ 1.903 Authorization Required.

(a) General rule. Stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part, except as specified in paragraph (b) of this section. However, stations in the Wireless Radio Services may be operated by third parties pursuant to secondary arrangements with licensees as set forth in § 1.904 of this chapter.

Insert rule permitting Wireless Radio Service licensees to enter into secondary arrangements with third parties to use their spectrum:

§ 1.904 Secondary Arrangements.

(a) Licensees in the Wireless Radio Services may enter into secondary arrangements whereby third parties can use a licensee’s spectrum in whole or in part. The types of secondary arrangements licensees may enter into include, but are not limited to, leases, franchises, or joint operating agreements.

(b) Licensees entering into secondary arrangements will be found to have maintained control of their licenses as required by Section 310(d) of the Communications Act if they retain de jure control (*i.e.*, legal ownership) of their licenses; the Wireless Telecommunications Bureau is notified of the secondary arrangements pursuant to subsection (e) of this rule; and the licensees meet a reasonable standard of care for their licenses (*i.e.*, they do not enter into a lease knowing the lessee will use the spectrum for unlawful purposes).

(c) To the extent authorized by the licensee, a third party who has a secondary arrangement with a licensee may enter into a sublease with another party to use the spectrum.

(d) *Restrictions.* Neither a secondary arrangement nor sublease creates any rights beyond the terms, conditions and period specified in a licensee’s authorization.

(e) Within 30 days of the effectiveness of a secondary or sublease arrangement, the licensee, lessee, or sublessee shall notify the Wireless Telecommunications Bureau of the arrangement and provide the following information:

(i) the licenses/spectrum, including any applicable call signs, to which a lease or sublease applies; and

(ii) the name, address, and phone number of the lessee/sublessee; and

(iii) the name, address, and phone number of the contact person for the lessee/sublessee.

(f) The Bureau will publish the notices received regarding secondary arrangements on a weekly basis.

Add definition of a "Lessee" in Part 1 of the FCC's Rules:

§ 1.907 Definitions.

Lessee. A lessee is a third party, including any sublessee, that has agreed to use the spectrum of a licensee in whole or in part, while the licensee retains the license. Such agreements include, but are not limited to leases, franchises, or joint operating agreements.

As demonstrated in Winstar's Comments and the Comments of the 37 Concerned Economists, the use of construction and coverage requirements is not necessary when the FCC uses market-based spectrum policies because the spectrum will be developed and used as the market demands. Thus, it is appropriate for the FCC to delete the requirements of §1.946. However, to the extent the FCC maintains its construction and coverage requirements, it should permit licensees to rely upon a lessee's construction and service.

§ 1.946 Construction and Coverage Requirements.

(c) Reliance on Lessee's Construction. Licensees may rely upon the construction and service of lessees using spectrum covered by the license at issue to fulfill their own construction, commencement of service, coverage, or substantial service requirements.

Include lessees in the rule which requires licensees and applicants to respond to official communications from the FCC:

§ 1.951 Duty to respond to official communications.

Licensees, lessees, or applicants in the Wireless Radio Services receiving official notice of an apparent or actual violation of a federal statute, international agreement, Executive Order, or regulation pertaining to communications shall respond in writing within 10 days to the office of the FCC originating the notice, unless otherwise specified. Responses to official communications must be complete and self-contained without reference to other communications unless copies of such other communications are attached to the response. Licensees, lessees, or applicants may respond via ULS.

II. Part 101 Rule Modifications

Add definition of "lessee" in Part 101:

§ 101.3 Definitions

As used in this part:

Lessee. A lessee is a third party, including any sublessee, that has agreed to use the spectrum of a licensee in whole or in part, while the licensee retains the license. Such agreements include, but are not limited to leases, franchises, or joint operating agreements.

Modify the performance requirement rule as follows:

§ 101.17 Criteria for renewal expectancy for the 38.6-40.0 GHz frequency band.

A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, that is the most important comparative factor to be considered in the proceeding as long as the applicant's past record for the relevant license period demonstrates that:

(1) The renewal applicant has substantially complied with applicable FCC rules, policies, and the Communications Act of 1934, as amended; and

(2) The renewal applicant has not otherwise engaged in substantial relevant misconduct in relation to the license.

Modify reference to build-out requirements for partitioned and disaggregated spectrum:

§ 101.56 Partitioned service areas (PSAs) and disaggregated spectrum.

(g) The renewal expectancy requirements for the partitioned service area or disaggregated spectrum shall be the same as applied to the EA authorization holder.

Clarify that area-wide licensees will not forfeit their licenses if they alter or remove facilities or discontinue operations on any one radio station. The current requirement is burdensome for area-wide licensees that may have numerous operating stations in an area and may want to discontinue operations of a station in response to consumer demand. Moreover, the requirement is inconsistent with the flexibility proposed in the secondary markets proceeding.

§ 101.65 Forfeiture and termination of station authorizations.

(a) In addition to the provision of § 1.955 of this chapter, except in the Local Multipoint Distribution Services, 24 GHz Service and the 38.6-40.0 GHz band, a license will be automatically forfeited in whole or in part without further notice to the licensee upon the voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more.

(b) Pursuant to § 1.955 of this chapter, except in the Local Multipoint Distribution Services, 24 GHz Service and the 38.6-40.0 GHz band, if a station licensed under this part discontinues operation on a permanent basis, the licensee must cancel the license. For purposes of this section, any station which has not operated for one year or more is considered to have

been permanently discontinued. See § 101.305 for additional rules regarding temporary and permanent discontinuation of service.

Insert a general reference to lessees in the frequency coordination procedures of § 101.103:

§ 101.103 Frequency coordination procedures.

For purposes of this rule, the term licensee(s) includes lessee(s), unless specifically noted otherwise. Pursuant to § 1.904, the Wireless Telecommunications Bureau must receive notice of leases and make such information available to other spectrum users. For purposes of coordinating spectrum and relying upon the procedures herein, coordinating parties must have notice of lessee information. Coordinating parties that rely upon the contact information provided by the Bureau to coordinate their facilities will be presumed to have met their obligations under this rule.

Include reference to Rectangular Service Areas in § 101.103 to clarify that this rule applies to incumbent as well as auction licensees and add new clause to clarify how long parties may rely upon coordination before facilities are put into operation:

(i)(1) When the licensed facilities are to be operated in the band 38,600 MHz to 40,000 MHz and the facilities are located within 16 kilometers of the boundaries of an Economic Area or Rectangular Service Area, each licensee must complete the frequency coordination process of subsection 101.103(d) with respect to neighboring EA licensees and existing licensees within its EA service area that may be affected by its operation prior to initiating service

(3) If operations have not commenced within 12 months after coordination has been completed, parties may assume that such facilities will not be operated and the party requesting coordination will lose its priority.

Delete subsection (b) in § 101.149 which requires each operating station in the 38.6-40.0 GHz band, LMDS bands, and the 24 GHz band to have posted a copy of the service area authorization. Such a requirement is burdensome for area-wide licensees that have numerous operating stations in an area and is inconsistent with the flexibility proposed in the secondary markets proceeding.

Include a reference to lessees in the rule which requires licensees to submit to FCC inspection:

§ 101.201 Station inspection.

The licensee or lessee of each station authorized in the radio services included in this part must make the station available for inspection by representatives of the Commission at any reasonable hour.

Ensure that upon detection of unauthorized transmission both licensees and lessees have an obligation to suspend those transmissions:

§ 101.207 Suspension of transmission.

Transmission must be suspended immediately upon detection by a station operator or upon notification by the Commission of a deviation from the technical requirements of the station authorization and must remain suspended until such deviation is corrected, except for transmission concerning the immediate safety of life or property, in which case transmission must be suspended immediately after the emergency is terminated.

Include a reference to lessees in the rule governing operator requirements:

§ 101.211 Operator requirements.

(a) Any person, with the consent or authorization of the licensee or lessee, may employ stations in this service for the purpose of telecommunications with the conditions and limitations set forth in § 101.135.

(b) The station licensee or lessee is responsible for the proper operation of the station at all times and is expected to provide for observations, servicing and maintenance as often as may be necessary to ensure proper operation.

(c) All persons operating stations (including all transmitter units thereof) must ensure the proper functioning and operations of those stations in accordance with the terms of the licenses of those stations.

Exempt the operators in the 38.6-40.0 GHz band, LMDS bands, and the 24 GHz band from posting station authorizations at radio stations and from keeping detailed information about the stations. As stated above, these types of requirements are burdensome for area-wide licensees that have numerous operating stations in an area and are inconsistent with the flexibility proposed in the secondary markets proceeding.

§ 101.215 Posting of station authorization and transmitter identification cards, plates, or signs.

(b) The requirements in paragraph (a) of this section do not apply to remote stations using frequencies listed in § 101.147(b) or to Local Multipoint Distribution Services, 24 GHz Service and operations in the 38.6-40.0 GHz band.

§ 101.217 Station records.

Each licensee of a station subject to this part, except those operators in the Local Multipoint Distribution Services, 24 GHz Service and the 38.6-40.0 GHz band, shall maintain records in accordance with the following:

Modify the discontinuance, reduction or impairment of service rule to delete subsection (a) which requires notification to the FCC for every station of a common carrier licensee that experiences such occurrences. This is burdensome for area-wide licensees that maintain numerous radio stations and may alter the arrangement of their radio stations based on consumer demand. They should not be required to inform the FCC each time they power down

or cease to use a particular radio station in an area. The Commission need only require that licensees subject to Title II obtain FCC authorization before discontinuing or severely reducing their service to a community.

§ 101.305 Discontinuance, reduction or impairment of service.

(a) No station licensee subject to Title II of the Communications Act of 1934, as amended, may voluntarily discontinue or severely reduce public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in part 63 of this chapter. In the event that permanent discontinuance of service is authorized by the Commission, the station license is terminated, except where discontinuance is a result of a change of status by the licensee from common carrier to non-common carrier.

(b) Any licensee not subject to Title II of the Communications Act of 1934, as amended, who voluntarily discontinues or severely reduces public communication service to a community or part of a community must notify the Commission within 7 days thereof. In the event of permanent discontinuance of service, the station license is automatically terminated, except where discontinuance is a result of a change of status by the licensee from non-common carrier to common carrier.

(c) Except in the Local Multipoint Distribution Services, 24 GHz Service and the 38.6-40.0 GHz band, if any common carrier radio frequency should not be used to render any service as authorized during a consecutive period of twelve months at any time after construction is completed under circumstances that do not fall within the provisions of paragraph (a), (b), or (c) of this section, or, if removal of equipment or facilities has rendered the station not operational, the licensee must, within thirty days of the end of such period of nonuse:

(1) Cancel the station license (or licenses); or

(2) File an application for modification of the license (or licenses) to delete the unused frequency (or frequencies); or

(3) Request waiver of this rule and demonstrate either that the frequency will be used (as evidenced by appropriate requests for service, etc.) within six months of the end of the initial period of nonuse, or that the frequency will be converted to allow rendition of other authorized public services within one year of the end of the initial period of nonuse by the filing of appropriate applications within six months of the end of the period of nonuse.

Insert requirement that lessee, in addition to licensees, must respond to official communication:

§ 101.309 Requirement that licensees and lessees respond to official communications.

All licensees and lessees in these services are required to respond to official communications from the Commission with reasonable dispatch and according to the tenor of such communications. Failure to do so will be given appropriate consideration in connection

with any subsequent applications which the offending party may file and may result in the designation of such applications for hearing, or in appropriate cases, the institution of proceedings looking to the modification or revocation of the pertinent authorizations.

Insert reference to lessees in the rule governing construction and operation of systems:

§ 101.1009 System operations.

(a) The licensee or lessee may construct and operate any number of fixed stations anywhere within the area authorized by the license without prior authorization, except as follows:

(1) A station would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter.

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

(b) Whenever a licensee or lessee constructs or makes system changes as described in paragraph (a) of this section, the licensee or lessee is required to notify the Commission within 30 days of the change under § 1.947 of this chapter and include a statement of the technical parameters of the changed section.

Modify the performance requirements rule for the LMDS service as follows:

§ 101.1011 Criteria for renewal expectancy.

A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, that is the most important comparative factor to be considered in the proceeding as long as the applicant's past record for the relevant license period demonstrates that:

(1) The renewal applicant has substantially complied with applicable FCC rules, policies, and the Communications Act of 1934, as amended; and

(2) The renewal applicant has not otherwise engaged in substantial relevant misconduct in relation to the license.

CERTIFICATE OF SERVICE

I, Crystal Rogers-Starkey, do hereby certify that on this 12th day of March 2001, copies of the foregoing Reply Comments of Winstar Communications, Inc. were delivered by hand, to the following parties:

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